

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE ENROLLED ACT No. 1342

AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 13-11-2-199.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 199.5. "Septic tank soil absorption system", for purposes of IC 13-26-5-2.5, means pipes laid in a system of trenches or elevated beds, into which the effluent from the septic tank is discharged for soil absorption, or similar structures.**

SECTION 2. IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. A district may do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
  - (A) Bylaws for the administration of the district's affairs.
  - (B) Rules and regulations for the following:
    - (i) The control of the administration and operation of the district's service and facilities.



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- (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
  - (A) a person;
  - (B) a nonprofit water, sewage, or solid waste project system; or
  - (C) an eligible entity;
 including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:
  - (A) The payment of the expenses of the district.
  - (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
  - (C) The payment of principal or interest on the district's obligations.
  - (D) To fulfill the terms of agreements made with:
    - (i) the purchasers or holders of any obligations; or
    - (ii) a person or an eligible entity.
- (8) **Except as provided in section 2.5 of this chapter**, require connection to the district's sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:
  - (A) there is an available sanitary sewer within three hundred (300) feet of the property line; and
  - (B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice.
- (9) Provide by ordinance for reasonable penalties for failure to

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connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

(C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the

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state, or the United States to provide services to the contracting party for any of the following:

- (A) The distribution or purification of water.
- (B) The collection or treatment of sanitary sewage.
- (C) The collection, disposal, or recovery of solid waste.
- (17) Make provision for, contract for, or sell the district's byproducts or waste.
- (18) Exercise the power of eminent domain.
- (19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:
  - (A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and
  - (B) the cost is determined by the board to be less than that of purchase or condemnation;
 the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.
- (20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.
- (21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.
- (22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:
  - (A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or
  - (B) pay adequate compensation for the property.
- (23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 3. IC 13-26-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2001]: Sec. 2.5. (a) As used in this section, "septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5.

(b) Subject to subsection (d) and except as provided in subsection (e), a property owner is exempt from the requirement to connect to a district's sewer system and to discontinue use of a septic tank soil absorption system if the following conditions are met:

(1) The property owner's septic tank soil absorption system was installed not more than five (5) years before the district's sewer system's anticipated connection date.

(2) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.

(3) The property owner, at the property owner's own expense, obtains and provides to the district a certification from the local health department or the department's designee that the septic tank soil absorption system is functioning satisfactorily. If the local health department or the department's designee denies the issuance of a certificate to the property owner, the property owner may appeal the denial to the board of the local health department. The decision of the board is final and binding.

(4) The property owner provides the district with:

(A) the written notification of potential qualification for the exemption described in subsection (g); and

(B) the certification described in subdivision (3);

within the time limits set forth in subsection (g).

(c) If a property owner, within the time allowed under subsection (g), notifies a district in writing that the property owner qualifies for the exemption under this section, the district shall, until the property owner's eligibility for an exemption under this section is determined, suspend the requirement that the property owner discontinue use of a septic tank soil absorption system and connect to the district's sewer system.

(d) A property owner who qualifies for the exemption provided under this section may not be required to connect to the district's sewer system for a period of three (3) years beginning on the date the district's sewer system's anticipated connection date. If ownership of the property passes from the owner who qualified for the exemption to another person during the exemption period, the exemption does not apply to the subsequent owner of the property.

(e) The district may require a property owner who qualifies for

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the exemption under this section to discontinue use of a septic tank soil absorption system and connect to the district's sewer system if the district credits the unamortized portion of the original cost of the property owner's septic tank soil absorption system against the debt service portion of the customer's monthly bill. The amount that the district must credit under this subsection is determined in STEP TWO of the following formula:

**STEP ONE:** Multiply the original cost of the property owner's septic tank soil absorption system by a fraction, the numerator of which is ninety-six (96) months minus the age in months of the property owner's septic system, and the denominator of which is ninety-six (96) months.

**STEP TWO:** Determine the lesser of four thousand eight hundred dollars (\$4,800) or the result of STEP ONE.

The district shall apportion the total credit amount as determined in STEP TWO against the debt service portion of the property owner's monthly bill over a period to be determined by the district, but not to exceed twenty (20) years, or two hundred forty (240) months.

(f) A district that has filed plans with the department to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected property owners:

- (1) that the property owner may be required to discontinue the use of a septic tank soil absorption system;
- (2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and
- (3) of the procedures to claim an exemption.

(g) To qualify for an exemption under this section, a property owner must:

- (1) within sixty (60) days after the date of the written notice given to the property owner under subsection (f), notify the district in writing that the property owner qualifies for the exemption under this section; and
- (2) within sixty (60) days after the district receives the written notice provided under subdivision (1), provide the district with the certification required under subsection (b)(3).

SECTION 4. IC 13-26-11-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 15. (a)** A district authority is established in each regional sewage district established under IC 13-26.



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(b) The district authority of a regional sewage district consists of the following:

(1) In the case of a regional sewage district located in one (1) county:

(A) except as provided in clause (B), the county executive of that county; or

(B) if the members of the county executive are trustees of the regional sewage district, the members of the county fiscal body.

(2) In the case of a regional sewage district located in more than one (1) county, one (1) county executive member, appointed by that member's county executive, from each county in which the district is located.

However, a person who serves on the board of trustees of a district may not be a member of the district authority.

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase before January 1, 2001, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the freeholder's objection.

(d) If a petition meeting the requirements of subsection (b) is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall

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hear the evidence produced and determine whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter. The district authority, by a majority vote, shall:

- (1) sustain the ordinance establishing the rates and charges;
- (2) sustain the petition; or
- (3) make any other ruling appropriate in the matter.

(g) The order of the district authority may be appealed by the district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

- (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.
- (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

SECTION 5. [EFFECTIVE JULY 1, 2001] (a) IC 13-26-5-2.5 and IC 13-26-11-15, both as added by this act, do not apply to a regional sewage district established under:

- (1) IC 13-26;
- (2) IC 13-3-2 (before its repeal on July 1, 1996); or
- (3) IC 19-3-1.1 (before its repeal on April 1, 1980);

if the regional sewage district began construction or received final bids on construction during 2001.

(b) This SECTION expires July 1, 2002.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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